

1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA

3 STATE OF OKLAHOMA, ex rel. W.A.)
4 DREW EDMONDSON, in his capacity as)
5 ATTORNEY GENERAL OF THE STATE OF)
6 OKLAHOMA and OKLAHOMA SECRETARY OF)
7 THE ENVIRONMENT C. MILES TROBERT,)
8 in his capacity as the TRUSTEE FOR)
9 NATURAL RESOURCES FOR THE STATE OF)
10 OKLAHOMA,)

11 Plaintiff,)

12 -vs-)

13 TYSON FOODS, INC., TYSON POULTRY,)
14 INC., TYSON CHICKEN, INC., COBB-)
15 VANTRESS, INC., AVIAGEN, INC., CAL-)
16 MAINE FOODS, INC., CAL-MAINE FARMS,)
17 INC., CARGILL, INC., CARGILL TURKEY)
18 PRODUCTION, LLC, GEORGE'S, INC.,)
19 GEORGE'S FARMS, INC., PETERSON)
20 FARMS, INC., SIMMONS FOODS, INC.,)
21 and WILLOW BROOK FOODS, INC.,)

22 Defendants.)

Case No.

05-CV-329-TCK-SAJ

23 TRANSCRIPT OF PROCEEDINGS,

24 held before the Honorable Sam A. Joyner, Magistrate Judge
25 in the United States District Court for the Northern
District of Oklahoma on October 8, 2008.

26 A P P E A R A N C E S

27 For the Plaintiff: Mr. Louis Bullock
28 Mr. Robert Nance
29 Mr. David Page
30 Mr. Daniel Lennington
31 Mr. David Riggs
32 Mr. Richard Garren
33 Mr. Fred Baker
34 Mr. Robert Blakemore and
35 Mr. Pat Green
Attorneys at Law

(Appearances continued . . .)

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EXHIBIT

4

1 (Appearances continued . . .)

2 For the Defendant Cargill: Mr. Del Ehrich
3 Ms. Leslie Southerland and
4 Ms. Theresa Hill
5 Attorneys at Law

6 For the Defendant Peterson: Ms. Nicole Longwell and
7 Mr. Scott McDaniel
8 Attorneys at Law

9 For the Defendant Tyson: Mr. Robert George and
10 Mr. Michael Bond
11 Attorneys at Law

12 For the Defendant Cal-Maine: Mr. Robert Redemann
13 Attorney at Law

14 For Simmons Foods: Mr. Bruce Freeman
15 Attorney at Law

16 For George's: Mr. James Graves
17 Attorney at Law

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19 P R O C E E D I N G S

20 COURTROOM DEPUTY: United States District Court
21 for the Northern District of Oklahoma is now in session,
22 the Honorable Sam A. Joyner presiding. Please be seated.

23 This is Case No. 05-CV-329-GKF-SAJ, Attorney
24 General of the State of Oklahoma versus Tyson Foods, et
25 al. Counsel please enter your appearance for the record.

MR. BULLOCK: Louis Bullock for the State of
Oklahoma.

MR. BAKER: Fred Baker for the State.

MR. LENNINGTON: Dan Lennington for the State
of Oklahoma.

1 there a question? They are -- let me start this way,
2 Your Honor. Source -- the source folks, both the
3 chemical signature and the bio-marker people. So the
4 bio-marker expert who responds to the plaintiffs, Valerie
5 Harwood, is Dr. Sam Myova.

6 THE COURT: Sam what?

7 MR. EHRICH: Myova, M-y-o-v-a.

8 THE COURT: You want him on November 1st?

9 MR. EHRICH: On November 1st, yes.

10 THE COURT: Yes. Any other human health
11 people?

12 MR. EHRICH: Dr. Herman Gibb.

13 THE COURT: How do you spell Gibb?

14 MR. EHRICH: G-i-b-b. We would propose Dr.
15 DuPont.

16 THE COURT: Spell that, please.

17 MR. EHRICH: Like the chemical company, I
18 believe. D-u-P-o-n-t.

19 THE COURT: First name?

20 MR. EHRICH: Help me out. Herbert. You know,
21 Your Honor, 20 some experts on each side. Dr. Banner.

22 THE COURT: And spell Banner.

23 MR. EHRICH: B-a-n-n-e-r. Those are the human
24 health experts.

25 THE COURT: Banner's first name?

1 MR. EHRICH: William or Bill.

2 THE COURT: November 1st on those, that's your
3 request?

4 MR. EHRICH: Yes.

5 THE COURT: All right.

6 MR. EHRICH: And as to chemical, if I may,
7 there may be others that we would commit to doing early
8 if we can. But again, since we haven't been through
9 these, weren't not sure. I'm hesitant to commit. But I
10 will tell this Court that we're able to disclose our
11 experts to respond to Dr. Olsen's so-called chemical
12 signature early. By November 1 we will. And if we
13 can't, we'll so advise the plaintiffs and those would be
14 disclosed on December 14th.

15 Your Honor, of course, it goes without saying
16 that, I'm mean, we're done. One of the points here is
17 that finality is a virtue. Lack of finality imposes an
18 extreme hardship on the defendants. So we'd ask two
19 things. No more errata, no more considered materials.
20 And we'd ask -- second thing is, they're simply is no
21 room in this order for rebuttal reports. I believe in
22 one of the footnotes in the plaintiff's response to our
23 motion there's the suggestion that after they see our
24 expert reports, they get, in effect, rebuttal reports.
25 Well, Your Honor hasn't provided for that and that is not

1 the typical practice and it flies in the face of the
2 requirement under Rule 26 that these reports be complete
3 and that they be final. So we would ask that as well.
4 And as to our -- as to the second item, the one we could
5 put off, we would ask that the Court determine that we in
6 fact have suffered prejudice, that we are entitled to
7 some recompense for wasted effort. But as to what that
8 might be, we can put that off until, I would suggest,
9 sometime next year. There has to be teeth in this
10 because, Your Honor, in the rolling productions -- and
11 while I'm sympathetic to the plaintiffs that they've
12 bitten off a lot in terms of making an unprecedented
13 showing over fifty years that there's some impact by
14 poultry litter, the fact is it's their case and they need
15 to be done.

16 THE COURT: Okay. Well, you may want to save
17 this for rebuttal, but obviously you're going to have to
18 explain this in detail how the late submissions by the
19 plaintiff have caused you to need an extra sixty days.

20 MR. EHRICH: I can do that. Would you like to
21 hear it now or would you like to wait until rebuttal?

22 THE COURT: I think I would like to wait for
23 rebuttal. That's sort of my thought.

24 MR. EHRICH: I'm happy to do that, Your Honor.

25 THE COURT: Well, maybe you should go ahead so

1 they can respond. If you're able to do that now, why
2 don't you go ahead do that because that's a part of your
3 case in chief. What of these late -- you've only
4 really -- in your brief has told me, this is Exhibit C,
5 has told me about the errata, assuming those are current.
6 But the real issue is why has that errata caused you to
7 need an extra sixty days?

8 MR. EHRICH: Are you talking about the named
9 folks, are you talking about our suggestion of the
10 general extension or both?

11 THE COURT: Named folks is really all I'm able
12 to deal with. We've got to get specific. I mean you've
13 only described errata for these five or six experts.

14 MR. EHRICH: I believe, Your Honor, that it is
15 more than that.

16 THE COURT: Let's see. Six.

17 MR. EHRICH: There are eight experts that we
18 describe in our Summary Chart C. Those eight experts are
19 also treated at length in our initial brief.

20 THE COURT: Okay. Well, those eight experts
21 then the errata you received, what is it about those that
22 cause you to need the extra sixty days?

23 MR. EHRICH: Again, these are the fate and
24 transport experts. These are their causation experts.
25 They have a number of experts who address those issues